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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/591,869

06/27/2007

Michel Bachmann

18184 (END)

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EXAMINER

DANG, PHONG SON H

ART UNIT

PAPER NUMBER

3773

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DELIVERY MODE

10/28/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/591,869	Applicant(s) BACHMANN ET AL.	
	Examiner SON DANG	Art Unit 3773	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 October 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 5-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 5-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 September 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/02/2009 has been entered.
2. The amendment filed 10/02/2009 has been entered. Claims 3-4 have been cancelled. Claims 8-21 have been added. Claims 1-2 and 5-21 are currently pending in the application.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 9 recites "wherein the is made of a biocompatible elastomeric material." It is not clear what is made of biocompatible material.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-2 and 5-8, 10, 12-14, 16 and 18-21 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 5,658,298 to Vincent et al. (Vincent).

In Regards to claims 1-2 and 5-8, 10, 12-14, 16 and 18-21:

Vincent teaches:

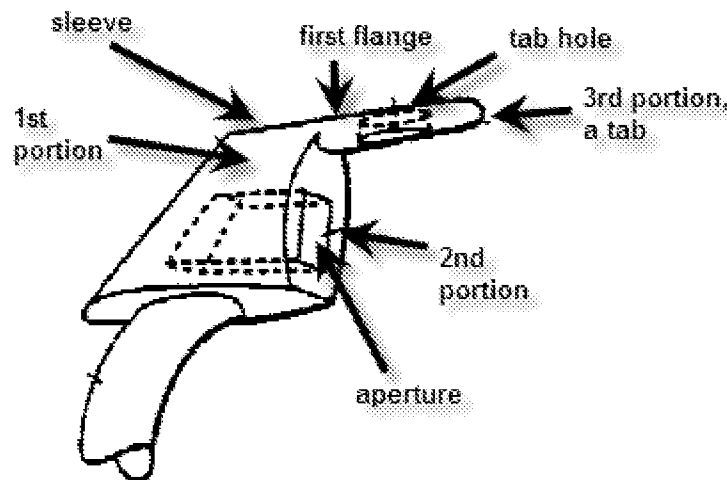
A surgically implantable adjustable ring for constricting a tubular organ, the adjustable ring (10, Fig. 2) comprising: an open ring body having closure system including a first (where 14 is, Fig. 2) and a second end parts (11, Fig. 2), the open ring body being designed to be closed around the tubular organ; the closure system constricting the tubular organ by closing the ring and forming the ring into a loop; and the first end part including a first reinforcement flange (the portion between the sleeve 14 and the aperture 16, Fig. 1) and a sleeve (14, Fig. 1) having a first and a second portions (front and back of sleeve, Fig. 2), the sleeve (14, Fig. 2) being designed to receive the second end part (11, Fig. 2), the sleeve (14, Fig. 2) being disposed in a substantially perpendicular direction in relation to the direction of the first end part (where 14 is, Fig. 2), the second part (11, Fig. 2) comprising a locking protrusion (12, Fig. 2) adapted to engage an aperture (15, Fig. 2) in the sleeve (14, Fig. 2), thereby securing the ring (10, Fig. 2) in a closed position. The second portion of the sleeve defines the aperture (15, Fig. 2), and wherein the second portion of the sleeve partially overlaps the second part (11, Fig. 2) when the ring (10, Fig. 2) is in the closed position. The

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sleeve (14, Fig. 2) being designed to receive the second end part (11, Fig. 2) and having a tab (18, Fig. 1) extending from the second portion, the sleeve (14, Fig. 2) being disposed in a substantially perpendicular direction in relation to the direction of the first end part (where 14 is, fig. 2), the second part (11, Fig. 2) comprising a locking protrusion (12, Fig. 2) adapted to engage an aperture (15, Fig. 2) in the sleeve (14, Fig. 2), thereby securing the ring in a closed position; wherein the tab (18, Fig. 1) comprises a portion (where the tab 18 is, Fig. 2) more flexible than the remaining portion of the tab (18, Fig. 2), the flexible portion being situated in the proximity of the aperture (15, Fig. 2), the flexible portion preventing an accidental opening of the closure system after the adjustable ring is disposed around the tubular organ. Flexible portion comprises an opening (16, Fig. 2). The first reinforcement flange (the portion between the sleeve 14 and the aperture 16, Fig. 1) is disposed transversally to the external perimeter of the ring. The ring is made of biocompatible elastomeric material. The first reinforcement flange (the portion between the sleeve 14 and the aperture 16, Fig. 1) is disposed transversally to the external perimeter of the ring. An open ring body (17, Fig. 1), a first end part (where 14 is, Fig. 1) including: a sleeve (14, Fig. 1) having a first portion; a second portion defining an aperture; and a third portion defining a tab hole (16, Fig. 1) and including a tab (18, Fig. 1), the second portion positioned between the first and third portions; one or more reinforcement flanges (the portion between the sleeve 14 and the aperture 16, Fig. 1) positioned at one or more of the first, second and third portions; and a second

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end part (11, Fig. 2), the first and second end parts positioned at opposite ends of the ring body. The second end part (11, Fig. 2) and at least one of the portions of the first end part (where 14 is, Fig. 2) are substantially perpendicular to one another, and the second end part includes a locking protrusion (13, Fig. 1) engageable with the aperture defined by the second portion. A first reinforcement flange (the portion between the sleeve 14 and the aperture 16, Fig. 1) is positioned at the first portion of the sleeve. Adjusting means (30, Fig. 6) to adjust the ring body diameter. The adjusting means is a wire (30, Fig. 6). The tab (18, Fig. 1) is made of flexible material. The tab (18, Fig. 1) comprises a portion more flexible than the remaining portion of the tab, the flexible portion being situated in the proximity of the aperture.



Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 9, 11, 15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vincent in view of US Patent No 4,442,153 to Meltsch (Meltsch) and further in view of US Patent No. 4,176,412 to Peterson (Peterson).

In regards to claims 9, 11, 15 and 17:

Vincent teaches:

The closure system according to claims 1, 5 and 13 (see rejections of claims 1, 5 and 13 above). The tab hole (16, Fig. 1) has adjacent sides (both sides of hole 16, Fig. 1).

Vincent fails to teach:

A second reinforcement flange adjacent the aperture. A side reinforcement flange is positioned at each of the adjacent sides in claim 15.

Meltsch teaches:

A second reinforcement flange (Col. 2, lines 4-18) adjacent the aperture.

Peterson teaches:

A side reinforcement flange (50, Fig. 1) is positioned at each of the adjacent sides.

It would have been obvious to one of ordinary skill in the art at the time of the invention to employ reinforcement structures at the sleeve in order to reinforce the sleeve in the event of breakage and it would have been obvious to make plurality of the

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reinforcement structures in order for multiples effects as in St. Regis Paper Co. v. Bemis Co. 193 USPQ 8 (7th Cir. 1977).

Response to Arguments

9. Applicant's arguments with respect to claims 1-2 and 5-21 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SON DANG whose telephone number is (571)270-5809. The examiner can normally be reached on Monday-Friday 7:30 AM - 5:00 PM EDT.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on 571-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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SD

/(Jackie) Tan-Uyen T. Ho/

Supervisory Patent Examiner, Art Unit 3773